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#10

9-26-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application
SUNGPrimary Examiner: Cocks, J.
Group Art Unit: 3743Serial No. 09/716,573
Filed: 11/17/00


Atty Docket No.: 00-11-1450

Title:
Child-Resistant Utility
LighterRECEIVED
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SEP 25 2003

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transmitted to the U.S. Patent and Trademark Office, Art Unit
3643, Fax No. 703-872-9302 on September 24, 2003.

By: 
Roy A. Kim (51,883)RESPONSE TO OFFICE ACTION DATED 03/24/03Mail Stop NON-FEE AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

OFFICIAL

Sir/Madam:

30 This is a response to the Office Action dated March 24,
2003. The Applicant herein presents arguments to traverse the
Examiner's 35 U.S.C. § 102(b), § 102(e) and § 103(a) rejections.
In addition further arguments are submitted in support of
Applicant's request that an interference be declared against the
35 Huang patent (U.S. 6,050,810).

I. RESPONSE TO 35 U.S.C. § 102(b) REJECTION:

The Examiner has rejected claims 16, 17, and 19 under
35 U.S.C. § 102(b) as being anticipated by Tasi (U.S.

5,531,592). As the basis for the 102(b) rejection, Examiner states that "the language of applicant's claim only require that the fuel-release valve be urged into a closed position and not that the fuel-release valve close *immediately* after ignition."

5 Applicant respectfully disagrees with Examiner's position.

Applicant is not asserting that the fuel-release valve must close immediately after ignition. Instead, Applicant has claimed that the fuel release valve closes when the safety button is released. This is recited in Applicant's claims. "A
10 safety button [moves] the spring mechanism from the nonoperational to operational position, ... the spring mechanism being urged into the nonoperational position, ... the second portion [of the spring mechanism] opens the fuel release valve when the spring mechanism is in the operational position, ...
15 [the] fuel release valve being spring loaded so as to be urged in the closed position..." See Claims 16, 17, 19. In other words, since both the spring mechanism and the fuel release valve are urged into the nonoperational and closed positions respectively, once the safety button is released, the spring
20 mechanism is no longer operational, and the fuel release valve must close. Accordingly, the language of applicant's claim requires that the fuel-release valve only remain open, so long as the safety button is depressed.

As another basis for Examiner's 102(b), Examiner stated that "[t]he spring mechanism of *Tasi* functions to urge the safety button into a closed position." Examiner is correct in asserting that the spring mechanism of *Tasi* functions to urge the safety button closed. However, in *Tasi*, the safety button cannot be closed so long as the fire button is depressed; and so long as the fire button is depressed, gas continues to be emitted, and the flame will continue to burn. In other words, *Tasi* discloses that once a flame is ignited, it will continue to burn, even when the safety button is released, so long as the fire button is depressed. This is completely different than Applicant's invention which discloses that the flame only burns so long as the safety button is depressed. The flame is in no way dependent on the firing button.

In other words, Applicant's invention is a further step in safety as compared to the *Tasi* disclosure. The *Tasi* safety button only helps prevent ignition. Applicant's invention, on the other hand, not only helps prevent accidental ignition, but also, prolonged accidental burning of the flame should ignition occur. This is because Applicant discloses a fuel release valve that only remains open, when the safety button is depressed. Once the button is released, the fuel release valve closes. Compare this with *Tasi* whereby the fuel release valve will remain open, as long as the fire button is depressed.

Therefore, if a child accidentally ignites the *Tasi* lighter and holds on to the firing button, the flame would continue to burn. This is true even if the safety button were released. However in Applicant's invention, even if accidental ignition were to occur, once the child releases the safety button, the flame would extinguish, even if the child continued to depress the firing button. This is a claimed safety improvement over the *Tasi* disclosure. Accordingly, Applicant respectfully traverses Examiner's 102(b) rejection.

10 II. RESPONSE TO 35 U.S.C. § 102(e) REJECTION:

The Examiner has rejected claims 18 and 19 under 35 U.S.C. 102(e) as being anticipated by *Huang*. An interference is respectfully requested to determine this issue. For a 102(e) rejection, a patent may act as prior art as of the date it was filed in the United States. *Huang's* patent issued April 18, 2000 and was filed on March 22, 1999. Applicant's application claims priority to the non-provisional U.S. Patent Application Serial No. 09/507,100, filed 02/17/2000, which in turn claims priority to a provisional U.S. Patent Application Serial No. 60/126,326, filed March 26, 1999. The effective filing dates of the *Huang* patent and Applicant's provisional application are within the statutory three months of each other. 37 C.F.R. §1.608(a). Furthermore, Applicant's invention was conceived and reduced to practice in the United States before the filing date

of the *Huang* patent. *Huang*, who is a Taiwanese citizen, and who invented in Taiwan, does not have any right to claim a date earlier than that of his United States filing date. 35 U.S.C. §104.

5 III. RESPONSE TO 35 U.S.C. § 103 REJECTION:

 The Examiner rejected Claims 18 under U.S.C. § 103(a) as being unpatentable over *Tasi* in view of *Bruhn*. Applicant believes that this invention as presently claimed falls outside of the subject matter indicated, taught, or suggested by *Tasi* in
10 view of *Bruhn*. According to MPEP § 706.02(j), to establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. In response, the Applicant respectfully traverses this rejection based on § 103(a) because neither the prior art
15 references, nor their combination, teaches or suggests all the claim limitations.

 The Examiner asserts that *Tasi* discloses all the limitations of claim 18 except that the fuel release valve is capable of movement on an axis parallel to the axis of movement
20 of the trigger. Claim 18 differs from claim 16, only with respect to this axis upon which the fuel release valve is capable of movement. Therefore, the Examiner is essentially stating that *Tasi* discloses all of the limitations of claim 16. However, Applicant has already traversed in detail Examiner's

assertion that claim 16 is anticipated by *Tasi*, and Applicant incorporates all of the argument of Section I above as if stated herein. Therefore, even assuming that *Bruhn* may be combined with *Tasi* to disclose that the fuel release valve is capable of movement on an axis parallel to the axis of movement of the trigger, since *Tasi* fails to disclose the other limitations of claim 18 (as discussed in Section I above), *Tasi* in combination with *Bruhn* fails to teach all of the Claim 18 limitations. Consequently, as neither *Tasi* nor *Bruhn* teaches that which is in Applicant's Claim 18, either singly or taken together in any reasonable combination, Applicant believes that Claim 18 is allowable over *Tasi* in view of *Bruhn*.

The Examiner has also rejected Claim 19 pursuant to 103(a) as being obvious over *Tasi*. Applicant respectfully traverses this rejection because *Tasi* does not teach all of the Claim 19 limitations. Specifically, Examiner points to applicant's response filed 05/08/02 in asserting that the spring mechanism in *Tasi* inherently includes rotational movement. This quotation by Examiner is taken out of context. Although the spring mechanism as disclosed by Applicant clearly has a rotational movement, *Tasi*'s disclosure does not teach a spring mechanism utilizing such rotational movement. The torsion generated by the *Tasi* disclosure is distinct from that generated by the rotational movement of Applicant's invention. Accordingly,

since *Tasi* does not disclose all the limitations of Claim 19, Examiner's 103(a) rejection is respectfully traversed.

IV. RESPONSE TO ARGUMENTS REGARDING INTERFERENCE:

Examiner has stated that claims 16-19 are not patentable, and therefore an interference cannot be initiated. As Applicant has traversed Examiner's rejection, it is Applicant's position that claims 16-19 are patentable and that an interference must be initiated.

Examiner has also stated that an interference cannot be initiated because claims 16 - 19 are not directed to the same invention of *Huang*. Examiner has asserted that the lighter of *Huang* is both structurally and functionally distinct from Applicant's lighter. Specifically, the Examiner has stated that the Applicant's edge and *Huang*'s hook are distinct structures.

Interference is proper when the prospective parties to the interference are claiming "the same patentable invention." 37 C.F.R. §1.603. The "same patentable invention" may be defined as using an anticipation/obviousness standard. 37 C.F.R. 1.601(n). A separate patentable invention requires that the separate invention be new (35 U.S.C. 102) and non-obvious (35 U.S.C. 103). 37 C.F.R. 1.601(n). In this instance, the *Huang* invention and Applicant's invention are, at the very least, obvious in light of one another. Applicant's cam-lever edge

performs the same function as Huang's hook. In both Huang and Applicant's invention, the hook or edge abuts the trigger preventing it from moving. Whether via tension or compression, each structure accomplishes the identical purpose, and it would
5 be obvious to one skilled in the art to interchange the two mechanisms.

The Examiner has also stated that contrary to Applicant's claimed invention, Huang is claiming direct engagement of the knob with the plug and latch. Again,
10 Applicant respectfully disagrees for it is Applicant's position that the Huang invention and Applicant's invention are, at the very least, obvious in light of one another. Applicant's knob/safety button directly engages the fuel release valve via the spring mechanism. Similarly, Huang's knob/safety button
15 engages the fuel release valve via a sleeve. It would be obvious to one skilled in the art to interchange the two means for engaging the plug and latch.

Based on these arguments, it is Applicant's position that Huang's invention is structurally and functionally the same as
20 that of Applicants or at the very least, obvious in light of one another. Accordingly, an interference must be initiated based on these claims.

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V. CONCLUSION:

In light of the above arguments, the Applicant respectfully requests reconsideration of claims 16 - 19. The Applicant believes the pending claims represent allowable
5 subject matter if the Applicant prevails in the interference, and respectfully requests that an interference be declared between this instant application and U.S. Patent No. 6,050,810 (Huang).


If any additional fees are required for this amendment and
10 response, the Director is authorized to deduct the required amounts from our deposit account no. 500703.

Respectfully Submitted,

TROJAN LAW OFFICES
By

OFFICIAL

Dated: September 24, 2003


Roy A. Kim (51,883)

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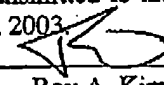
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September 24, 2003

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By: 
Roy A. Kim (51,883)

Re: RCE for Child-Resistant Utility Lighter
U.S. Appl No. 09/716,573 (Filed 17 Nov '00)
Inventor: Sung, K.
Examiner: Cocks, J. (Unit 3743)
Attorney Docket No. 00-11-1450

Dear Sir/Madam:

OFFICIAL

Please find attached the following documents:

1. Cover Letter (1 page);
2. Response to Office Action Dated 03/24/03 (9 pages);
3. Petition for Extension of Time (3 mo. - 1 page); and
4. Credit Card Payment Form (1 page).

If any additional fees are required, please deduct the appropriate fee amount from our Deposit Account No. 500703. Our customer number is 23388.

Very truly yours,

TROJAN LAW OFFICES

by 

Roy A. Kim
Reg. No. 51,883

RAK:rak
Attachments

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